IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 16506 of 2007(M)

PETITIONER:

PEPSICO INDIA HOLDING (P) LTD.,
IDA, KANJIKODE, PALAKKAD, REPRESENTED BY
ITS MANAGER-PLANT ACCOUNTING MR.NEERAJ KHETAN.

BY ADV. SRI.A.M.SHAFFIQUE,
SRI.E.K.NANDAKUMAR,
SRI.A.K.JAYASANKAR NAMBIAR,
SRI.ANIL D. NAIR.

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY ITS SECRETARY,. COMMERCIAL TAXES, THIRUVANANTHAPURAM.**
2. **INTELLIGENCE OFFICER, SQUAD NO.1, COMMERCIAL TAXES, PALAKKAD.**
3. **DEPUTY COMMISSIONER OF COMMERCIAL TAXES, PALAKKAD.**

BY GOVT. PLEADER SRI. C.K. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16506/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ASSESSMENT ORDER DTD. 10/03/2006 FOR THE ASSESSMENT YEAR 2000-2001.

EXT.P.2: COPY OF THE ASSESSMENT ORDER DTD. 15/03/2006 FOR THE ASSESSMENT YEAR 2001-2002.

EXT.P.3: COPY OF THE JUDGMENT DTD 25/01/2007 OF THIS HONOURABLE COURT IN W.P. (C). NO. 15858/06.

EXT.P.4: COPY OF THE NOTICE DTD. 09/02/2007 ISSUED BY THE R.2. FOR THE ASSESSMENT YEAR 2000-2001.

EXT.P.5: COPY OF THE NOTICE DTD. 09/02/2007 ISSUED BY THE R.2. FOR THE ASSESSMENT YEAR 2001-02.

EXT.P.6: COPY OF THE REPLY DTD. 17/02/2007 PREFERRED BY THE PETITIONER BEORE THE R.2. FOR THE ASSESSMENT YEAR 2000-01.

EXT.P.7: COPY OF THE REPLY DTD. 17/02/2007 PEFERRED BY THE PETITIONER BEFORE THE R.2. FOR THE ASESSMENT YEAR 2001-02.

EXT.P.8: COPY OF THE ORDER DTD. 23/02/2007 PASSED BY THE R.2. FOR THE ASSESSMENT YEAR 2000-01.

EXT.P.9: COPY OF THE ORDER DTD. 23/02/2007 PASSED BY THE R.2. FOR THE ASSESSMENT YEAR 2001-02.

EXT.P.10: COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE R.3. DTD. 02/03/2007.

EXT.P.11: COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE R.3. DTD. 02/03/2007.

EXT.P.12: COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE R.3. DTD. 02/3/2007.

EXT.P.13: COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE R.3. DTD. 02/03/2007.

EXT.P.14: COPY OF THE ORDER IN W.P.(C) NO. 11181/2007 DTD. 30/03/2007 OF THIS HONOURABLE COURT.

W.P.(C). NO.16506/2007:

EXT.P.15: COPY OF THE ORDER DTD. 07/05/2007 OF THE R.3. FOR THE ASSESSMENT YEAR 2000-01.

EXT.P.16: COPY OF THE ORDER DTD. 07/05/2007 OF THE R.3. FOR THE ASSESSMENT YEAR 2001-02.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.16506 of 2007-M

Dated this the Ist day of June, 2007

J U D G M E N T

The petitioner challenges Exts.P15 and P16 orders passed in the stay petitions filed along with Exts.P10 and P11 revision petitions. The petitioner in those revision petitions challenged Exts.P8 and P9 penalty orders relating to the years 2000-2001 and 2001-2002. Pursuant to the spot inspection on 27-7-2001, the books of accounts of the petitioner were called for. According to the original authority, even after giving several chances to the petitioner, it did not produce the books of accounts. Therefore, the penalty orders were passed as per Exts.P8 and P9. The petitioner disputes the said statement in the impugned orders that the petitioner failed to produce the books of accounts. According to it, it has produced all the books of accounts. It is a disputed question of fact, which cannot be gone into in this writ petition. But, the learned counsel for the petitioner submits that the assessing authority in Ext.P1 proceedings accepted the books of accounts for the year 2000-2001 and passed the assessment order. The said Officer stated in Ext.P1 that the books of accounts were verified and everything was found in order. Therefore, the assumption

of the Intelligence Officer that the accounts may be irregular, based on which Ext.P8 order has been passed is unfounded. So, the learned counsel for the petitioner points out that the imposition of penalty for the year 2000-2001 is unjustified. Ext.P2 order for the year 2001-2002 has been passed on best judgment assessment basis as the petitioner failed to produce the books of accounts. According to the petitioner, the said finding in Ext.P2 and also the identical finding in Ext.P9 that the petitioner failed to produce the books of accounts is not correct. Ext.P2 is already under challenge before the statutory appellate authority. So, the learned counsel submits that in view of the above facts, absolute stay should have been granted. But, instead a mechanical order has been passed under which it was directed to pay 50% of the penalty amount.

2. I heard the learned Government Pleader for the respondents also. The Government Pleader fully supports the impugned orders and it is submitted that it is a just and proper order as the petitioner has been directed to pay only 50 percent of the penalty amount.

3. I feel that, in view of Ext.P1 assessment order, in relation to the year 2000-2001 stay should have been granted on more liberal terms against Ext.P8 order. The assessing authority has founded that

the books of accounts were in order and the returns submitted by the petitioner was accepted. In view of the above position, Ext.P5 is modified. The demand of 50% of penalty pending disposal of the revision is vacated. If the petitioner furnishes security for the amount payable under Ext.8 to the satisfaction of the second respondent, the said order will remain in abeyance till the disposal of Ext.P10. The third respondent shall consider and pass orders on Ext.P10 as expeditiously as possible at any rate within four months from the date of production of a copy of this judgment. The petitioner shall co-operate with the revisional authority for early disposal of the revision petitions and if unnecessary adjournments are sought, the revisional authority shall reject the same and dispose of the matter.

4. Regarding Ext.P16, I feel that the contentions of the petitioner cannot be accepted. It has failed to produce the books of accounts before the assessing authority as well as the Intelligence Officer. Though the petitioner has a different version, I think it being a disputed question of fact, I cannot go into it under Article 226 of the Constitution of India. The petitioner has been directed to pay only 50 percent of the penalty amount. I think it is just and fair order. So, the challenge against Ext.P16 is denied.

5. The learned counsel for the petitioner seeks one weeks' time

for paying the amount demanded under Ext.P16. If the amount payable under Ext.P16 is paid within one week from today, the payment shall be treated as having been paid in time.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS